

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 08-O-10074-RAP
)	
BRUCE MARTIN GREENFIELD,)	
)	DECISION
Member No. 80122,)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

In this original disciplinary proceeding, which proceeded by default after respondent **BRUCE MARTIN GREENFIELD** failed to appear at trial, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent with a total of five counts of professional misconduct. For the reasons set forth *post*, the court finds that respondent is culpable on all five counts and concludes that the appropriate level of discipline for the found misconduct is four years' stayed suspension and four years' probation on conditions, including that respondent be actually suspended from the practice of law for two years and until respondent obeys two bankruptcy court sanction orders by paying sanctions totaling \$87,901.02 with interest and until respondent establishes his rehabilitation, fitness to practice, and present learning and ability in the general law in accordance with Rules of Procedure of the State Bar, title IV,

¹ Unless otherwise indicated, all references to rules are to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).²

Furthermore, the court concludes that respondent should be given credit towards his period of actual suspension for the time he has been involuntarily enrolled as an inactive member of the State Bar of California under section 6007, subdivision (e) since the date on which respondent first sought relief from default on August 14, 2013.

The State Bar was represented by Senior Trial Counsel Michael J. Glass. Respondent initially appeared and participated in this proceeding in propria persona, but his default was entered because he failed to appear when his case was called for trial on July 23, 2013 (Rules Proc. of State Bar, rule 5.81(A)).

Key Procedural History

The State Bar filed the notice of disciplinary charges (NDC) in this proceeding on October 21, 2011. Thereafter, respondent filed an answer to the NDC. Then, on January 3, 2012, respondent filed an amended answer to the NDC.

As noted *ante*, respondent's default was entered because he failed to appear when his case was called for trial on July 23, 2013. Moreover, in its July 23, 2013, order entering respondent's default, the court involuntarily enrolled respondent as an inactive member of the State Bar of California under section 6007, subdivision (e) effective July 26, 2013. Respondent thereafter filed multiple motions seeking to have his default vacated or set aside, but all of those motions were denied. As a result, respondent has continuously been involuntarily enrolled inactive since July 26, 2013.

Following the entry of respondent's default on July 23, 2013, the State Bar filed a petition for disbarment after default (Rules Proc. of State Bar, rule 5.85) on December 19, 2013. The court, however, denied the petition for disbarment in an order filed on May 7, 2014. In its May 7, 2014, order, the court also ordered that, on May 30, 2014, this case would be taken under

² All further references to standards are to this source.

submission for decision as to whether the facts alleged in the notice of disciplinary charges that were deemed admitted by the entry of respondent's default, establish that respondent has violated one or more statutes, rules, or court orders that would warrant the imposition of discipline and, if so found, a recommendation as to the discipline to be imposed for the violation or violations. Finally, in its May 7, 2014, order, the court directed the State Bar to file any evidence of aggravating circumstances that it wanted the court to consider no later than May 30, 2014. The State Bar timely filed its evidence of aggravating circumstances on May 30, 2014.³

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in this state on June 23, 1978, and has been a member of the State Bar of California since that time.

Facts

First Bankruptcy Case

In late October 2000, respondent filed a voluntary chapter 7 bankruptcy petition for Solutions Media, Inc. (Solutions) in the United States Bankruptcy Court for the Southern District of California (Southern District Bankruptcy Court). The bankruptcy trustee⁴ in Solutions' bankruptcy proceeding was Gerald Davis (Trustee Davis). Attorney Gary Rudolph represented Trustee Davis.

Fraudulent Transfer Action

In mid-October 2002, Trustee Davis filed, on behalf of Solutions' creditors, a lawsuit against about 20 named defendants in the San Diego Superior Court in an attempt to recover

³ On June 5, 2014, respondent filed a reply to the State Bar's evidence of aggravating circumstances. Because respondent remains in default, the court has not and will not consider that reply. (Rules Proc. of State Bar, rule 5.85(3).)

⁴ The bankruptcy trustee is appointed by the bankruptcy court and performs the administrative jobs involved in a bankruptcy proceeding. For example, the trustee is charged with locating, collecting or seizing, and then selling the bankruptcy estate's nonexempt assets for the benefit of the debtor's unsecured creditors.

various assets that Solutions had allegedly transferred in fraud of its creditors before it filed for bankruptcy (fraudulent transfer action).

Out of the some 20 named defendants, respondent was the attorney of record for the following five defendants: Better Bandwidth, Inc. (Better Bandwidth); High Speed Music, Inc. (High Speed); TYJ Consulting, Inc. (TYJ); Database Storage and Design, Inc. (Database Storage); and Focus Advertising, Inc. (Focus).

First Removal of Fraudulent Transfer Action

On October 7, 2003, respondent removed the fraudulent transfer action from the San Diego Superior Court (i.e., state court) to the Southern District Bankruptcy Court (i.e., federal court) on behalf of the defendants, including respondent's clients High Speed and Database Storage. In June 2004, the parties stipulated to remand the fraudulent transfer action back to the San Diego Superior Court. The superior court then scheduled the trial in the fraudulent transfer action for July 1, 2005.

Second, Third, Fourth, and Fifth Bankruptcy Cases

In summer 2005, respondent filed a separate voluntary bankruptcy petition in the United States Bankruptcy Court for the Central District of California (Central District Bankruptcy Court) for each of the following four clients, who were all defendants in the fraudulent transfer action.

1. On June 28, 2005, respondent filed a bankruptcy petition for Database Storage. That bankruptcy proceeding was dismissed on December 12, 2005.
2. On July 5, 2005, respondent filed a bankruptcy petition for High Speed. That bankruptcy proceeding was dismissed on September 26, 2005.
3. On July 7, 2005, respondent filed a bankruptcy petition for Better Bandwidth. That proceeding was also dismissed on September 26, 2005.
4. On July 7, 2005, respondent filed a bankruptcy petition for TYJ. That proceeding was dismissed on October 12, 2005.

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Second Removal of the Fraudulent Transfer Action

On June 29, 2005, respondent removed the fraudulent transfer action from the San Diego Superior Court (i.e., state court) to the Central District Bankruptcy Court (i.e., federal court) on behalf of defendant Database Storage. As a result, the fraudulent transfer action could not and did not go to trial on July 1, 2005.

On September 19, 2005, Trustee Davis filed, in Database Storage's bankruptcy proceeding in the Central District Bankruptcy Court, a motion for relief from the automatic bankruptcy stay so that the fraudulent transfer action could proceed; a motion to remand the fraudulent transfer action back to state court; and a motion to dismiss Database Storage's bankruptcy proceeding and for sanctions.

On October 12, 2005, the Central District Bankruptcy Court granted Trustee Davis's motions and remanded the fraudulent transfer action back to the San Diego Superior Court. Then, on December 12, 2005, the Central District Bankruptcy Court dismissed Database Storage's bankruptcy proceeding and awarded Trustee Davis \$10,000 in attorney's fees and costs against Database Storage.

Third Removal of the Fraudulent Transfer Action

On about February 1, 2006, respondent removed the fraudulent transfer action from the San Diego Superior Court to the Southern District Bankruptcy Court on behalf of GM Marketing, Inc. (GM Marketing). GM Marketing, however, was not even a party to the fraudulent transfer action and, therefore, lacked standing to remove the fraudulent transfer action to the Southern District Bankruptcy Court. Accordingly, on April 7, 2006, Trustee Davis demanded that respondent remand the fraudulent transfer action to the superior court or Trustee Davis would seek sanctions against respondent. Respondent received Trustee Davis's notice to remand, but did not remand the fraudulent transfer action to the superior court or otherwise respond to Trustee Davis's demand.

Thus, on June 2, 2006, Trustee Davis filed a motion to remand the fraudulent transfer action to the superior court and to recover \$20,000 in sanctions against respondent. In his motion, Trustee Davis argued, inter alia, that respondent's removal of the fraudulent transfer action for GM Marketing was untimely and that respondent removed it to federal court for purposes of harassment, causing delay, and needlessly increasing the cost of litigation. On June 14, 2006, respondent filed an opposition to Trustee Davis's motion to remand.

On July 7, 2006, the Southern District Bankruptcy Court granted Trustee Davis's motion to remand and remanded the fraudulent transfer action to the San Diego Superior Court effective July 21, 2006, and ordered respondent to pay \$20,000 in sanctions to Trustee Davis. The bankruptcy court's July 7, 2006, order provided that respondent was to pay the \$20,000 in sanctions upon the entry of the order. The order was thereafter entered on July 21, 2006.

In February 2007, the United States District Court for the Southern District of California affirmed the Southern District Bankruptcy Court's order imposing \$20,000 in sanctions on respondent. Respondent, however, has never paid the \$20,000 in sanctions. Nor has respondent ever reported the \$20,000 in sanctions to the State Bar.

Sixth Bankruptcy Case and Fourth Removal of the Fraudulent Transfer Action

On February 17, 2006, respondent filed a voluntary bankruptcy petition for Focus in the Southern District Bankruptcy Court. And, on February 22, 2006, respondent again removed the fraudulent transfer action from the San Diego Superior Court to the Southern District Bankruptcy Court.

The bankruptcy court dismissed Focus's bankruptcy proceedings on March 23, 2006, because no one attended the meeting of creditors. Then, on August 18, 2006, Trustee Davis filed a motion to remand the fraudulent transfer action to state court, which the Southern District Bankruptcy Court granted on July 24, 2007.

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Seventh, Eighth, Ninth, Tenth, and Eleventh Bankruptcy Cases

In late summer or early fall 2006, respondent filed a separate voluntary bankruptcy proceeding in the Central District Bankruptcy Court for each of the following five clients:

1. Respondent filed a bankruptcy petition for Focus on August 21, 2006.
2. Respondent filed a bankruptcy petition for TYJ on September 27, 2006.
3. Respondent filed a bankruptcy petition for Database Storage on September 27, 2006.
4. Respondent filed a bankruptcy petition for High Speed on September 27, 2006.
5. Respondent filed a bankruptcy petition for Better Bandwidth on September 27, 2006.

On April 24, 2007, Trustee Davis filed motions for relief from the automatic bankruptcy stay in each of these five bankruptcy cases. On June 6, 2007, the Central District Bankruptcy Court filed orders granting Trustee Davis's motions for relief from the stay in these five cases.

Fifth Removal of the Fraudulent Transfer Action and the Trustee's Cases

On September 19, 2007, respondent again removed the fraudulent transfer action from the San Diego Superior Court to the Central District Bankruptcy Court.

On September 19, 2007, Trustee Davis filed an adversarial proceeding against Mike Alexander, Eric Kirkland, William Wright, and High Speed in the Central District Bankruptcy Court.

On October 1, 2007, the Central District Bankruptcy Court filed an order remanding the fraudulent transfer action to the San Diego Superior Court after finding that respondent had removed the action to the Central District Bankruptcy Court on September 19, 2007, in bad faith. Notwithstanding the Central District Bankruptcy Court's finding that respondent had removed the fraudulent transfer action from the superior court to the bankruptcy court in bad faith, between October 11 and October 15, 2007, respondent filed four additional notices of removal in an attempt to again remove the fraudulent transfer action from the superior court to the Central District Bankruptcy Court. In response, Trustee Davis filed motions to remand the fraudulent

transfer action to the superior court and to strike the additional notices of removal, which the bankruptcy court granted.

Order to Show Cause and Sanctions

On October 16, 2007, the Central District Bankruptcy Court filed and served on respondent an order to show cause (OSC) directing respondent to appear in court on December 5, 2007, and show cause why sanctions should not be imposed on respondent and respondent's clients High Speed, Better Bandwidth, TYJ, Database Storage, and Focus (collectively the six OSC respondents) and why respondent should not be referred to the State Bar of California for discipline. The OSC specified that sanctions could be imposed under title 28 United States Code section 1447(c) (section 1447(c)); Federal Rules of Bankruptcy Procedure, rule 9011 (rule 9011); and title 11 United States Code section 105(a) (section 105(a)).

On November 2, 2007, Trustee Davis filed a declaration in support of imposing sanctions on the six OSC respondents and a request for the attorney's fees he incurred as a result of their actions. On November 7, 2007, respondent filed a misleading response to the OSC in which he claimed that he had "attempted numerous times in 'good faith' to request the court(s) to order the matter to binding arbitration by numerous notices of removal to preserve the rights of appeal by the defendant(s)."

Respondent attended the December 5, 2007, hearing on the OSC. On December 11, 2007, the Central District Bankruptcy Court filed an order on the OSC in which the court found (1) that the six OSC respondents' numerous bankruptcy filings and repeated removal of the fraudulent transfer action delayed an October 1, 2007, trial in the fraudulent transfer action; (2) that the six OSC respondents' actions increased the costs of litigation and unduly harassed the opposing party; and (3) that, even after the Central District Bankruptcy Court found that respondent's September 19, 2007, removal of the fraudulent transfer action from the superior court to the bankruptcy court was done in bad faith, the respondents filed four additional notices

of removal; and that the fact that the respondents did not stop filing notices of removal until after the bankruptcy court issued the OSC showed that the respondents had intentionally acted in bad faith.

The bankruptcy court further found that the imposition of sanctions on the six OSC respondents under section 1447(c) was warranted because the respondents' removal filings in 2005 and in September through October 2007 were improper in light of the following facts:

1. The six OSC respondents filed a total of nine bankruptcy cases and five notices of removal in the Central District Bankruptcy Court.
2. The six OSC respondents' removal of the fraudulent transfer action from the state court to the federal bankruptcy court on September 19, 2007, was done in bad faith.
3. After the bankruptcy court's October 1, 2007, remand order, the respondents filed four additional notices of removal in an attempt to remove the fraudulent transfer action to the bankruptcy court.
4. The respondents did not stop filing the additional notices of removal until after the bankruptcy court issued the OSC.
5. The respondents filed the additional notices of removal in bad faith.

The Central District Bankruptcy Court further found that the imposition of sanctions on respondent was also warranted under rule 9011.⁵ In fact, based on the following three factors, the bankruptcy court found that respondent's filings of multiple bankruptcy proceedings and numerous requests to remove the fraudulent transfer action from state court to federal court were done to harass, cause unnecessary delay, and increase the costs of litigation; involved bad faith; and were objectively unreasonable.

⁵ Under rule 9011 (which is virtually identical to Federal Rules of Civil Procedure, rule 11), when a debtor signs and the debtor's attorney files a bankruptcy petition, they both certify to the bankruptcy court that, to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the petition is not being presented for any improper purpose and that the debtor intends to pursue the bankruptcy case to completion and that the claims and legal contentions in the petition are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

1. Respondent engaged in forum shopping by filing bankruptcies and removals in the Central District Bankruptcy Court after his attempts in the Southern District Bankruptcy Court were unsuccessful.
2. The six OSC respondents did not have a good faith intent to pursue the many bankruptcy proceedings they filed to completion or to obtain debt relief or reorganization under the Bankruptcy Code.
3. The six OSC respondents improperly filed multiple bankruptcy proceedings and removals in different forums to delay and impede the fraudulent transfer action in state court, and the respondents' actions did in fact delay and impede the state court action and harass the opposing party and greatly increased the cost of the litigation.

The Central District Bankruptcy Court also found that the imposition of sanctions against the six OSC respondents was appropriate under the court's inherent powers and section 105(a). That court found that the respondents' conduct in filing multiple bankruptcy proceedings and removals, without ever intending to complete the bankruptcies, constituted bad faith and abuse of the bankruptcy process. In addition, the court found that the respondents' improper conduct was done to delay and, in fact, did delay the fraudulent transfer action in state court. Respondents did not stop removing or stop filing notices of removal until after the Central District Bankruptcy Court filed the OSC on October 16, 2007. The respondents filed the four additional removals in October 2007 in bad faith.

In light of the foregoing findings, on December 11, 2007, the Central District Bankruptcy Court imposed sanctions totaling \$67,901.02 on respondent and his clients, jointly and severally. The bankruptcy court ordered that \$9,420 of the \$67,901.02 be paid to Robert Steele and that the remaining sanctions to be paid to Trustee Davis or to Trustee Davis's attorney (i.e., Attorney Rudolph). By December 26, 2007, respondent received notice of the Central District Bankruptcy Court's December 11, 2007, order on the OSC. Respondent, however, has never paid the \$67,901.02 in sanctions in accordance with the Central District Bankruptcy Court's December 11, 2007, order. Moreover, respondent failed to report the \$67,901.02 in sanctions to the State

Bar until August 14, 2008. Respondent should have reported the sanctions by January 25, 2008, which was 30 days after December 26, 2007.

Purported Counterclaims for Indemnity

On November 14, 2007, the San Diego Superior Court entered judgment in the fraudulent transfer action in favor of Trustee Davis and against the defendants. On May 5, 2008, respondent filed, in the Central District Bankruptcy Court, for his clients Better Bandwidth, TYJ, Database Storage, High Speed, and Focus what respondent purports are counterclaims for indemnity against Trustee Davis and his attorney (i.e., Attorney Rudolph).

On May 23, 2008, Trustee Davis filed and properly served on respondent a motion to dismiss or strike the purported counterclaims, a request that respondent be declared a vexatious litigant, and a request for monetary sanctions against respondent.

On June 12, 2008, respondent filed, in the Central District Bankruptcy Court, amended purported counterclaims for his clients.

At a June 18, 2008, hearing on Trustee Davis's motion, the Central District Bankruptcy Court found that the purported counterclaims respondent filed for his clients were not only procedurally improper, but were also legally baseless. In addition, the bankruptcy court lacked jurisdiction to consider the purported counterclaims because the fraudulent transfer action had previously been remanded to the San Diego Superior Court where the action was tried and a judgment entered.

In short, on June 18, 2008, the Central District Bankruptcy Court dismissed all of the counterclaims and, after taking into account respondent's "long record of filing frivolous motions to harass the Trustee and delay the state court litigation," declared respondent a vexatious litigant and enjoined him from filing other pleadings or motions in the related cases

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and adversary proceedings without prior court approval. The bankruptcy court further enjoined respondent from filing any new bankruptcy cases or motions relating to these actions without prior court approval. Respondent was properly served with the bankruptcy court's order.

In July 2008, respondent filed a notice of appeal with respect to the bankruptcy court's June 18, 2008, order, but respondent's appeal was later dismissed.

Conclusions of Law

Count One (§ 6068, subd. (c) [Attorney's Duty to Counsel/Maintain Only Legal or Just Actions or Defenses])

Section 6068, subdivision (c) provides that an attorney has a duty to counsel or maintain those proceedings, actions, or defenses only as appear to the attorney legal or just, except the defense of a person charged with a public offense. In count one, the State Bar charges that respondent willfully violated section 6068, subdivision (c) because he failed to counsel or maintain such actions, proceedings, or defenses only as appear to him legal or just when he filed multiple bankruptcies and removals for improper purposes, continued to file notices of removal in order to delay the fraudulent transfer action even after the bankruptcy court put respondent on notice that such conduct constituted bad faith, and filed the baseless and improper counterclaims for indemnity against Trustee Davis and Attorney Rudolph. The record clearly establishes these charged violations of section 6068, subdivision (c). Without question, respondent's misconduct, which spanned almost five years from October 2003 to June 2008, involved the deliberate abuse of the bankruptcy process.

Count Two (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment. In count two, the State Bar charges that respondent willfully

violated section 6103 “[b]y not paying the \$67,901.02 in sanctions” in accordance with the Central District Bankruptcy Court’s December 11, 2007, order on the OSC. The record fails to establish that respondent has the ability to pay the \$67,901.02 in sanctions. Nonetheless, respondent may be appropriately discipline for not paying the sanctions.

The \$67,901.02 in sanctions that the Central District Bankruptcy Court imposed on respondent are in the nature of restitution. (Cf. *Sorensen v. State Bar* (1991) 52 Cal.3d 1036, 1044-1045 [attorney ordered to make restitution for the specific out-of-pocket losses and expenses the victim of attorney’s misconduct incurred when attorney violated his duty to bring only just actions and his duty not to commence or continue an action from any corrupt motive].) Thus, respondent had a duty to make sufficient bona fide efforts to legally acquire the resources needed to pay the sanctions as ordered. (Cf. *In the Matter of Taggart* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 302, 311; *In the Matter of Broderick* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 138, 148, fn. 8; see also *In the Matter of Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 81, 86.) At a minimum, respondent was required to pay the sanctions to the best of his financial ability, which includes making all reasonable sacrifices in his standard of living to maximize the amount of sanctions/restitution paid. (Cf. *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, 307; *In the Matter of Nees* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 464, fn. 4 [an attorney who has been ordered to make restitution is “expected to exercise his [or her] very best efforts in making restitution and to immediately embark upon a decisive course of action designed to timely do so”].)

Because respondent is in default, he did not present any credible, concrete evidence to establish that he has made sufficient bona fide efforts to legally acquire the resources necessary to pay the sanctions as ordered. Nor did respondent otherwise establish that he has undertaken sufficient good faith efforts to comply with the sanctions order. Nor has respondent established that he has paid the sanctions in accordance with his ability to pay. Finally, even if respondent

actually lacked the financial ability to pay any portion of the sanctions since they were imposed on him, he is not being disciplined for violating a court order with which he lacked the ability to comply. Instead, he is being disciplined for not complying with the Central District Bankruptcy Court's sanctions order without first attempting to be relieved from the order based on his inability to pay. (*In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, 868, fn. 4.)

The record clearly establishes the charged violation of section 6103.

Count Three (§ 6103 [Failure to Obey a Court Order])

In count three, the State Bar charges that respondent willfully violated section 6103 by not paying the \$20,000 in sanctions in accordance with the Southern District Bankruptcy Court's July 7, 2006, sanctions order. The record again fails to establish that respondent has the ability to pay the \$20,000 in sanctions. Nonetheless, for the reasons set forth under count two, *ante*, respondent may still be appropriately disciplined for not paying the sanctions.

The record clearly establishes the charged violation of section 6103.

Count Four (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

Section 6068, subdivision (o)(3) provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery. In count four, the State Bar charges that respondent willfully violated section 6068, subdivision (o)(3) by not reporting the \$20,000 in sanctions imposed on him in the Southern District Bankruptcy Court's July 7, 2006, sanctions order. The record clearly establishes the charged violation of section 6068, subdivision (o)(3).

Count Five (§ 6068, subd. (o)(3) [Failure to Report Sanctions])

In count five, the State Bar charges that respondent willfully violated section 6068, subdivision (o)(3) by not reporting the \$67,901.02 in sanctions imposed on him in the Central

District Bankruptcy Court's December 11, 2007, order until August 14, 2008. Respondent should have reported the sanctions by January 25, 2008, which was 30 days after December 26, 2007, when respondent learned of the sanctions. That January 25, 2008, deadline was not extended or postponed by respondent's appeal of that order. (*In the Matter of Respondent Y, supra*, 3 Cal. State Bar Ct. Rptr. at pp. 866-867.) The record clearly establishes the charged violation of section 6068, subdivision (o)(3).

Aggravation

Prior Record of Discipline (Std. 1.5(a).)

Respondent has one prior record of discipline. According to the State Bar's evidence of aggravating circumstances filed on May 30, 2014, respondent has a prior record of discipline. More specifically, the State Bar informs the court that "on June 27, 2012, in *In re The Disciplinary Proceeding of Bruce M. Greenfield*, Case No. 2:11-mp-00179-TD, the United States Bankruptcy Court for the Central District of California filed an order imposing discipline on respondent consisting of a five-year actual suspension." Even though the State Bar failed to apprise this court of the factual basis for the five-year suspension the bankruptcy court imposed on respondent, the court finds that the five-year suspension is a very significant aggravating circumstance in the present proceeding.

Multiple Acts of Misconduct (Std. 1.5(b).)

Respondent's present misconduct involves multiple acts.

Lack of Cooperation to State Bar (Std. 1.5(h).)

Respondent displayed a lack of cooperation with the State Bar during this disciplinary proceeding. About two weeks before the original February 21, 2012, trial date in this matter, respondent filed a meritless and frivolous notice of removal in this State Bar Court disciplinary proceeding purporting to remove this disciplinary proceeding to the Central District Bankruptcy Court. When the bankruptcy court set the matter for a status conference and a hearing on an

OSC regarding remand, respondent failed to appear at the status conference and hearing. As the bankruptcy court held, respondent's purported removal was void under, inter alia, *In re Wade* (9th Cir. 1991) 948 F.2d 1122, 1124 and *Cooper v. State Bar* (1987) 43 Cal.3d 1016.

Respondent's meritless and frivolous purported removal caused the State Bar and the bankruptcy court significant inconvenience and wasted the limited resources of both entities. This court finds respondent's lack of cooperation to be serious aggravation. Particularly since it shows that respondent continues to abuse the bankruptcy process.

Mitigation

Because respondent defaulted, he was not able to present any evidence in mitigation, and the court is unaware of mitigation to which respondent might be entitled.

Discussion

The purpose of State Bar Court disciplinary proceedings is not to punish attorneys, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d. 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d. 1016, 1025.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d. 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d. 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Under standard 1.1, "[r]ehabilitation can also be an objective in determining the appropriate sanction in a particular case, so long as it is consistent with the primary purposes of discipline."

Standard 1.7(a) provides that, if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

Standard 1.7(b) provides, in pertinent part, if aggravating circumstances are found, they should be considered alone and in balance with any mitigating factors.

Standard 1.7(c) provides, in pertinent part, if mitigating circumstances are found, they should be considered alone and in balance with any aggravating factors.

Standard 2.8(a) applies to respondent's violations of section 6103 (obey court orders) and section 6068, subdivision (c) (maintain only just actions). Standard 2.8(a) provides:

"Disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068(a)-(h)."

Standard 2.8(b) applies to respondent's violations of section 6068, subdivision (o)(3). Standard 2.8(b) provides that reproof is appropriate for violation of the duties required of an attorney under Business and Professions Code section 6068, subdivisions (i), (j), (l) or (o).

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

The State Bar has not provided the court with a recommendation as to the appropriate level of discipline. The court is aware that there are a couple of relatively recent cases involving an attorney's failure to obey a court order in willful violation of section 6103 that have resulted in reprovals. For example, in *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592 the attorney violated a superior court's confidentiality order regarding a settlement agreement (§ 6103). In mitigation, the attorney did not have a prior record of

discipline in 18 years of practice and acted in good faith. There was no aggravation. The attorney in *Respondent X* was privately reproved without conditions.

In *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862 the attorney violated a sanctions order requiring the attorney to pay \$1,000 in sanctions (§ 6103) and failed to report those sanctions to the State Bar (§ 6068, subd. (o)(3)). In mitigation, the attorney had no prior record of discipline. There was no aggravation. The attorney in *Respondent Y* was privately reproved with conditions attached, including restitution/payment of the \$1,000 in sanction as ordered, Ethics School, and passage of a professional responsibility examination.

The misconduct in the present proceeding is significantly greater than that in *Respondent X* and *Respondent Y*. In the present proceeding, respondent not only violated sections 6103 and 6068 subdivision (o)(3), but he also violated section 6068, subdivision (c) by maintaining unjust and illegal actions. Moreover, respondent's violations of section 6068, subdivision (c) in involved bad faith and abuse of the bankruptcy process. As the Central District Bankruptcy Court aptly found, respondent's improper filing of multiple bankruptcy proceedings and improper repeated removals of the fraudulent transfer action from the San Diego Superior Court to the bankruptcy courts were objectively unreasonable and undertaken in bad faith to harass the plaintiff in the fraudulent transfer action, to cause unnecessary delay in that action, and to improperly increase the litigation costs in that action. Notably, respondent's misconduct continued over a period of almost five years.

It has been more than eight years since Southern District Bankruptcy Court imposed the \$20,000 in sanctions on respondent, and it has been almost seven years since the Central District Bankruptcy Court imposed the \$67,901.02 in sanctions on respondent; yet, respondent has failed to pay any portion of the sanctions. Accordingly, the court concludes that respondent should be required to comply with the two sanction orders by paying the full amount of the sanctions together with interest before respondent's two-year actual suspension is terminated. (Cf. *In the*

Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459, 466 [If attorney fails to make any restitution for an extended period of time, the attorney has the “burden to prove factors justifying any recommendation other than one requiring restitution prior to being relieved of [any] actual suspension.”]; *In the Matter of Elliott* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr 541, 545, citing *Bate v. State Bar* (1983) 34 Cal.3d 920, 925.)

On balance, the court concludes that the appropriate level of discipline for the found misconduct is four years’ stayed suspension and four years’ probation on conditions, including a two-year actual suspension that will continue until respondent complies with the two sanction orders by paying the full amount of the sanctions together with interest thereon. Of course, even if respondent has discharged all or part of the sanctions totaling \$87,901.02 (\$20,000 plus \$67,901.02) in bankruptcy, it is still appropriate for this court to recommend that respondent be required to pay the sanctions as restitution. And that is because restitution is an important part of rehabilitation and public protection because it forces errant attorneys to confront, in concrete terms, the harm that their misconduct has caused. [Citation.] Because the responsibilities of a lawyer differ from those of a layman, a lawyer may be required to make restitution as a moral obligation even when there is no legal obligation to do so. [Citation.]” (*In the Matter of Petilla* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 231, 248.)

Recommendations

Discipline

It is recommended that respondent **BRUCE MARTIN GREENFIELD**, State Bar number 80122, be suspended from the practice of law in California for four years, that execution of that period of suspension be stayed, and that respondent be placed on probation⁶ for a period of four years subject to the following conditions:

⁶ The probation period will commence on the effective date of the Supreme Court order in this proceeding. (See Cal. Rules of Court, rule 9.18.)

1. Respondent is suspended from the practice of law for a minimum of the first two years of probation (with credit given for the period of involuntary inactive enrollment beginning as of August 14, 2013), and respondent will remain suspended until the following requirements are satisfied:
 - i. Respondent complies with the Order Granting Trustee's Motion to Remand Adversary Proceeding No. 06-90123-JM; and Awarding Sanctions Against Bruce Greenfield, Esq. of the United States Bankruptcy Court for the Southern District of California that is dated July 20, 2006, and that was entered on July 21, 2006, in Bankruptcy No. 00-10592-JM7; Adversary No. 06-90123-JM by paying the \$20,000 sanctions award together with 10 percent simple interest thereon per annum from July 21, 2006, until paid to Gerald H. Davis, Chapter 7 Trustee, and respondent provides satisfactory proof of his compliance to the State Bar's Office of Probation in Los Angeles.
 - ii. Respondent complies with the Memorandum of Decision and Order Regarding Order to Show Cause of the United States Bankruptcy Court for the Central District of California that is dated December 11, 2007, and that was filed and entered on December 11, 2007, in Bankruptcy No. SV 06-11676 MT, etc. (Chapter 7) and Adversary No. SV 07-01224 MT, etc., paying \$9,240 in sanctions together with 10 percent simple interest thereon per annum from January 10, 2008, until paid to Robert Steele and by paying \$58,661.02 in sanctions together with 10 percent simple interest thereon per annum from January 10, 2008, until paid to Gerald H. Davis, Chapter 7 Trustee, and respondent provides satisfactory proof of his compliance to the State Bar's Office of Probation in Los Angeles.
 - iii. Respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice, and learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)
2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If

the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

5. Within 30 days after the effective date of the Supreme Court order in this proceeding, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of the session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
8. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within the period of his suspension and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: August 28, 2014.

RICHARD A. PLATEL
Judge of the State Bar Court